

No. 15147

United States
Court of Appeals
for the Ninth Circuit

GERTRUDE FLETCHER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California,
Southern Division.

FILED

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—7-20-56

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PATIL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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THOMAS H. LUDLOW, JR.,
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Los Angeles 12, California.

In the United States District Court in and for the
Southern District of California, Southern Division

No. 25929-SD

January, 1956, Grand Jury, Southern Division

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN A. WILLIAMS,

Defendant.

INDICTMENT

The Grand Jury charges:

Count One

(U.S.C., Title 18, Sec. 545)

On or about November 20, 1955, in San Diego County, California, within the Southern Division of the Southern District of California, defendant John A. Williams, with intent to defraud, did knowingly and wilfully smuggle and clandestinely introduce into the United States from a foreign country, namely, Mexico, certain merchandise, that is to say, approximately 22 pounds, net weight, of bulk marihuana, which said merchandise should have been invoiced, and did fraudulently and knowingly import and bring into the United States from a foreign country, namely, Mexico, said merchandise contrary to United States Code, Title 19, Chapter 4, and particularly Sections 1461 and 1484.

Count Two

(U.S.C., Title 18, Sec. 545)

On or about November 20, 1955, in San Diego County, California, within the Southern Division of the Southern District of California, defendant John A. Williams, did knowingly receive, conceal, and facilitate the transportation and concealment of certain merchandise, namely: approximately 22 pounds, net weight, of bulk marihuana, which said merchandise, as the defendant then and there well knew theretofore had been imported and brought into the United States contrary to United States Code, Title 19, Chapter 4, and particularly Sections 1461 and 1484 thereof.

Count Three

(U.S.C., Title 26, Sec. 4755)

On or about November 20, 1955, in San Diego County, California, within the Southern Division of the Southern District of California, defendant John A. Williams, being a person required to register and pay the special tax under the provisions of Sections 4751 to 4753, Title 26, United States Code, did unlawfully import approximately 22 pounds, net weight, of bulk marihuana, without having so registered and paid such tax.

A True Bill.

/s/ GEORGE P. WEST,

Foreman.

/s/ LAUGHLIN E. WATERS,

United States Attorney.

[Endorsed]: Filed April 12, 1956.

In the United States District Court in and for the
Southern District of California, Southern Division

In Re:

GERTRUDE FLETCHER

MEMORANDUM IN SUPPORT OF ORDER
IN CIVIL CONTEMPT OF GERTRUDE
FLETCHER

On March 29, 1956, Fletcher appeared as a witness before the Federal Grand Jury at San Diego, California. After being duly sworn, and while being questioned by the Assistant United States Attorney, she refused to answer certain questions on the Constitutional ground that her testimony might tend to incriminate her. The jury then adjourned to the Court of the Honorable Jacob Weinberger where after some hearing on the grounds of the privilege invoked, Fletcher was directed to answer the questions propounded. At the suggestion of Fletcher's attorney the Court queried Fletcher as to whether if returned to the Grand Jury room she would then answer the question. Fletcher replied at this time that she would continue to resist the questions on the stated grounds. The Government now seeks an Order of Civil Contempt against her.

Contempts are of two types, criminal and civil. Prior to 1948 the provisions of the Code relating to civil and criminal contempts were separate. Thus, under Judicial Code, Sec. 268, 28 USCA 385, in

force prior to the new criminal rules of 1948, it was provided:

“The said courts shall have power to impose and administer all necessary oaths, and to punish by fine or imprisonment, at the discretion of the court, contempts of their authority. Such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said courts.

“R. S. No. 725, March 3, 1911, C231 No. 268, 36 Stat. 1163.”

This section was repealed by act of June 25, 1948, C646 No. 39, 62 Stat. 992, and incorporated in part in Section 459 of new Title 28 and in part by Section 401 of new Title 18.

Historical and Revision note following 459 (supra) states:

“The provision of Section 385 of Title 28, USC 1940 ed, giving to ‘all courts of the United States’ power to impose and administer all necessary oaths is the only part of such section in this title. The remainder is incorporated in Section 401 of revised Title 18, Crimes and Criminal Procedure.”

And in the historical note following Section 401 it is stated:

“* * * Section 385 conferred two powers. The first part authorizing courts of the United States to impose and administer oaths will remain in said Title 28. The second part relating to contempt of court constitutes this section.”

Section 401, Title 28, U.S.C., alluded to above, provides:

“A court of the United States shall have power to punish by fine or imprisonment at its discretion such contempt of its authority and none other, as——

1. Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
2. Misbehavior of any of its officers in their official transactions;
3. Disobedience or resistance to its lawful writ, process, order, rule, decree or command.”

It is important to keep in mind that the judicial sanction sought to be here invoked against Fletcher is civil and not criminal contempt. The courts have amply distinguished between the respective functions served by the two forms. Thus sentences for criminal contempt are primitive in their nature and are imposed for the purpose of vindicating the authority of the Court.

United States v. United Mine Workers of
America (1947) 330 U. S. 258, 302

Gompers v. Bucks Stove & Range Co. (1911),
221 U. S. 418, 441.

Judicial sanctions in civil contempt are twofold:
(a) to compensate the complainant for losses sus-
tained and/or (b) to coerce the contumner into com-
pliance with the Court's order.

United States v. United Mine Workers
(Supra) 304

Gompers v. Bucks Stove & Range Co.
(Supra) 448, 449.

Civil contempt is a sanction to enforce compliance
with an order of the Court.

Sauber v. Whetstone
(7th Cir. 1952) 199 F2 520.

While a criminal contempt proceeding is one for
punishment of alleged contempt, as an offense by
fine and imprisonment, one or both and expiation is
to the public as for a criminal offense.

In re Manufacturers Trading Corp. (1952) 6th
Cir. 194 F2 948.

A civil contempt proceeding is in the nature of a
proceeding for enforcement of some duty and is
essentially a remedy for coercing a person to do the
thing required.

Ibid.

See also :

U. S. v. International Union UMW
(1951) 190 F2 865

Boylan v. Detrio
(1951) 187 F2 375

Tobin v. Piolet
(1951) 7th Cir. 186 F2 886

Juneau Spruce Corp. v. I.L.W.U.
(1955) 131 F. Supp. 866 (D. C. Hawaii)

U. S. v. Yates
(1952) 107 F. Supp. 412 D. C. Cal.

In Boylan v. Detrio (1951) 7th Cir. 186 F2 886
(supra), the Court stated :

“Civil contempt proceedings are remedial and coercive, not punitive, in their nature, they look only to the future. They are not instituted as punishment for past offenses, but to compel obedience to the orders and decrees of the Court made for the benefit not of public justice but of parties to the litigation to compensate them for losses caused by defendant’s disobedience of earlier orders and decrees made for their benefit * * *”

“* * * A civil contempt exists only where there is a disobedience of Court orders to the damage of the other party and the punishment is by imprisonment to coerce the performance of an affirmative act or by the imposition of a fine to

compensate the injured party for actual loss or damage suffered because of the disobedience of an order or decree of the Court made for his benefit." (Emphasis added.)

See also on the coercive aspect of civil contempt:

Lamb v. Cramer

285 U. S. 217, 221

Michaelson v. U. S.

266 U. S. 42, 66

Gompers v. Bucks Stove & Range Co.

(supra).

In *McComb v. Jacksonville Paper Co.* (1948) 336 U. S. 187 at 193, the Court states that:

"The measure of the Court's power in civil contempt proceedings is determined by the requirements of full remedial relief."

Examples given are production of books, *Penfield Co. v. Securities Exchange Commission*, 330 U. S. 585, and payment of money, *Gompers v. Bucks Stove & Range Co.* (supra).

The interest of the Government in this proceeding is to secure Fletcher's answers to the propounded questions. It is best served by the instant proceeding in civil contempt to coerce the desired answers. The Government has at this time no desire to punish Fletcher, merely to compel her obedience to order of Court.

Turning to the power of the Court to punish for failure to answer questions before the grand jury,

it is established that the power of the Court to punish for contempts extends to Grand jury proceedings.

O'Connell v. United States

(1930) 2d Cir. 40 F2 201

Elwell v. United States

7th Cir. 275 Fed 775

United States v. Caton

(1803) 25 Fed. Cas. No. 14758

As stated by the recent case of Carlson v. United States (1954):

“The Grand Jury is an arm of the Court; and no doubt there may be instances of misbehavior in the Grand Jury room that constitute a completed offense of criminal contempt of Court because committed in the ‘presence’ of the Court within that broader meaning of 18 USC 401.”

(Citing many cases.)

This case goes on to state that mere declination of the witness in good faith, albeit erroneously, to answer a question before the Grand Jury does not constitute a contempt any more than a similar refusal would in Open Court as further stated:

“The claim of privilege calls upon the judge to make a ruling whether the privilege was available in the circumstances presented; and if the judge thinks not, then he instructs the witness to answer * * * A fortiori, the same

must be true where a witness before a Grand Jury erroneously but in good faith claims his privilege * * *

“* * * The Grand Jury in that event, if it desires to pursue the matter further, must call on the assistance of the Court to make a ruling whether the privilege is available and to instruct the witness to go back to the jury room and answer the question if the ruling is made that the privilege was improperly claimed.”

Here the proceeding above mentioned has been scrupulously carried out. Fletcher was taken from the Grand Jury room to the courtroom, there examined by the Court as to the availability of the alleged privilege, and upon the conclusion by the Court that the asserted privilege was not available to her, Fletcher was ordered to answer the questions. This, in the physical presence of the Court, she refused to do, thus creating a contempt in the very presence of the Court.

The procedure to be followed in the prosecution of criminal contempts is set out in Rule 42 of the Federal Rules of Criminal Procedure. Subsection (a) of this rule provides for a summary procedure to be followed where the complained of contempt is committed in the presence of the Court. The procedure in cases of civil contempt is not so clearly defined. In *Phillipe v. Window Glass Cutters League of America* (1951) D. C. Ark. 99 Fed. Supp. 369, a patent case, the Court dealt extensively with

contempts both civil and criminal and the procedures followed. There it was suggested that some form of accusation be filed which conformed to the requirements of Rule 8 F.R.C.P. that defendant be permitted to answer, and that a hearing be held. However true this may be for civil contempts committed outside the presence of the Court, where, as here, the civil contempt was committed in the presence of the Court, the civil contumner can ask for no greater protection than the criminal contumner would have in a like situation.

Rule 42(a) provides in this respect:

“A criminal contempt may be punished summarily if the Judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the Court. The order of contempt shall recite the facts and shall be signed by the Judge and entered of record.”

This summary procedure was in fact followed under similar circumstances by the District Court for the Southern District of California, Central Division, Honorable Peirson Hall, Judge in the case of *United States v. Kasinowitz*, 8791-PH later reversed on the grounds that the Fifth Amendment was properly raised *Kasinowitz v. United States* (1950) 9th Cir., 181 F(2d) 632. In that case Kasinowitz refused before the Grand Jury to answer certain questions propounded relating to the identity of certain Communist leaders. The grounds as-

serted for the refusal was, as in the instant case, that of the Fifth Amendment—that the testimony might tend to incriminate him. The Grand Jury returned him to Court where Judge heard argument of counsel for the witness and the Government and then overruled the objections to the answering of the questions. Kasinowitz returned to the Grand Jury and again refused to answer the questions upon the stated ground. The Grand Jury so reported to the Court. Judge Hall after hearing further argument at that time found Kasinowitz in civil contempt and ordered him committed to the custody of the Marshal until he returned to the Grand Jury and answered the questions ordered by the Court.

The situations being closely similar it is submitted that this honorable Court may deal with Fletcher in a similar manner.

In the light of the premises it should once more be stressed that at this time the Government seeks not to punish Fletcher with a sentence and a fine for criminal contempt but seeks solely to have this honorable Court exercise its coercive power in civil contempt to commit Fletcher until such time as she returns to the Grand Jury and answers the questions ordered by the Court to be answered or until further order of this honorable Court.

In Re MeeKley (1943) 13 F(2d) 310.

As to whether the Court properly ordered Fletcher to answer.

The Ninth Circuit has held that whether the questions asked were in fact incriminating so as to warrant invocation of the Fifth Amendment protection is a question addressed to the discretion of the trial Court and in absence of an abuse thereof such determination will not be overturned. *Miller v. United States* (1938) 9th, 95 F(2d) 492.

It is, of course, established that the Fifth Amendment is a personal right and an attempt to invoke it to shield third persons may be the basis for contempt. *United States v. Yates* (1952) D. C. Cal. 107 F. Supp. 412.

[Endorsed]: Filed April 17, 1956.

In the United States District Court in and for the
Southern District of California, Southern Division

No. 1885-SD-W Civil

IN RE GERTRUDE FLETCHER

JUDGMENT, ORDER AND COMMITMENT
IN CIVIL CONTEMPT

This matter came on to be heard in Open Court this 29th day of March, 1956, upon complaint of a duly impaneled and constituted Grand Jury, January, 1956, term, present in Court, in the presence of the witness, Gertrude Fletcher, and her counsel, Walter Gordon, and present as attorney for the Government, Laughlin E. Waters, United States

Attorney, by Harry D. Steward, Assistant United States Attorney, and that said witness appeared before said Grand Jury on this date and after being duly sworn was asked questions to which she gave answers as follows:

Q. Did you accompany your son, John Arthur Williams, to Tijuana, Mexico, on November the 20th—— A. I refuse to answer——

Q. Wait until I finish the question, please. On November the 20th or 21st, 1955?

A. I refuse to answer on the "tution" ground that my testimony may incriminate me.

* * *

Q. Do you remember, or did you see Thomas on November 20, 1955?

A. I refuse to answer on the same ground, constitutional ground—on the constitution that ground that my testimony might incriminate me.

Q. Think carefully, the only time that you saw Thomas and your son together was together in Los Angeles and that was on two occasions, is that right? A. Yes.

Q. How about over here in the city jail in San Diego? A. I refuse to answer.

Q. Did your son and you visit Thomas in the city jail?

A. I refuse to answer on the same ground. (Witness apparently referring to earlier claims of privilege under the Constitution.)

The Court, after hearing evidence and argument of counsel for the witness and the Government on the matter of how the answers to said questions would incriminate or tend to incriminate said Gertrude Fletcher, overruled the objection to the answering of said questions by said witness and stated that it was the present opinion of the Court that the privilege attempted to be invoked was not properly invoked and the witness was ordered to go back to the Grand Jury room and answer said questions. At that time counsel for the witness then indicated that the witness would refuse to answer the questions before the Grand Jury although ordered to do so by the Court. Whereupon, the Court then and there asked the witness as follows: "Do you now refuse to answer those questions by going back to the Grand Jury room for that purpose?" to which the witness replied, "I refuse to testify on the Constitutional grounds that my testimony would incriminate me."

The Court, thereupon, after hearing further argument of counsel for both the witness and the Government adjourned until April 17, 1956, to enable counsel for the witness to propose additional evidence and argument.

On April 17, 1956, the Court reconvened and heard additional evidence and arguments of counsel for witness Fletcher and the Government, and being fully advised in the premises finds that said witness is in civil contempt of this Court in that said Gertrude Fletcher did wilfully disobey and resist a lawful order of this Court, to wit, the order

hereinabove set out to answer the aforesaid questions.

It Is Therefore Ordered, Adjudged and Decreed that said witness Gertrude Fletcher be committed to the custody of the U. S. Marshal and by him held until said witness returns to said Grand Jury and answers the said questions ordered by said Court to be answered as hereinabove set forth or until further order of this Court.

It Is Further Ordered that the clerk deliver a certified copy of this Judgment and Commitment to the U. S. Marshal or other qualified officer and that the copy serve as a commitment of the defendant.

Dated this 17th day of April, 1956.

/s/ JACOB WEINBERGER,
United States District
Court Judge.

[Endorsed]: Filed April 17, 1956.

Docketed and entered April 19, 1956.

MINUTES OF THE COURT

April 17, 1956

Present: Hon. Jacob Weinberger, District Judge.

Counsel for Plaintiff.

Counsel for Witness.

Witness Gertrude Fletcher.

Proceedings:

Further hearing on motion of U. S. Attorney that witness be found in contempt and committed to the custody of the U. S. Marshal.

Attorney Steward makes statement re subject matter of the Grand Jury investigation.

On motion of Attorney Gordon, Harry D. Steward is called, sworn, and testifies on examination by Attorney Gordon for respondent witness.

On own request, Walter L. Gordon is called, sworn, and testifies on behalf of the respondent witness.

At 3:05 p.m., and recess is declared until 4:30 p.m., and at 4:45 p.m., Court reconvenes herein, appearing as before.

Both sides rest.

The Court finds the defendant in civil contempt, and It Is Ordered that the defendant is committed to the custody of the U. S. Marshal until the witness returns to the Grand Jury and answers questions ordered by the Court, or until further order of the Court. Witness does not offer to answer questions.

The Court signs judgment, order, and commitment in civil contempt and Orders same filed and entered, to wit: (See judgment.)

Attorney Gordon files notice of appeal from said order and moves to fix bail on appeal at \$500.00.

Attorney Ludlow argues in opposition to motion. It Is Ordered said motion to fix bail is denied.

At 5:00 p.m., a recess is declared by the Court.

JOHN A. CHILDRESS,
Clerk.

By /s/ E. M. ENSTROM, JR.,
Deputy Clerk.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant: Gertrude
Fletcher, 131 East Century Boulevard, Los
Angeles, California;

Name and Address of Appellant's Attorney: Wal-
ter L. Gordon, Jr., 4104 South Central Avenue,
Los Angeles, California;

Offense: Contempt of Court;

Date of Judgment: April 17, 1956;

Sentence:

I, the above-named appellant, hereby appeal to
the United States Court of Appeals for the Ninth
Circuit from the Judgment above mentioned on the
grounds set forth below.

Dated: April 17, 1956.

/s/ GERTRUDE FLETCHER,
Appellant.

/s/ WALTER L. GORDON, JR.,
Attorney for Appellant.

Grounds of Appeal

That said sentence and judgment are in violation of Appellant's Constitutional rights under the Fifth Amendment of the United States Constitution against self-incrimination.

[Endorsed]: Filed April 17, 1956.

[Endorsed]: Filed April 19, 1956.

In the District Court of the United States, Southern District of California, Southern Division
No. 1885-SD-W

Before: The Honorable Jacob Weinberger,
Judge Presiding.

In Re

GERTRUDE FLETCHER

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Appearances:

LAUGHLIN E. WATERS,
United States Attorney, By
HARRY D. STEWARD,
Assistant United States Attorney
in Charge of San Diego Office,
On Behalf of the Plaintiff.

WALTER L. GORDON, JR.,
Attorney at Law,
On Behalf of the Witness,
Gertrude Fletcher.

At 5:00 p.m., a recess is declared by the Court.

JOHN A. CHILDRESS,
Clerk.

By /s/ E. M. ENSTROM, JR.,
Deputy Clerk.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant: Gertrude
Fletcher, 131 East Century Boulevard, Los
Angeles, California;

Name and Address of Appellant's Attorney: Wal-
ter L. Gordon, Jr., 4104 South Central Avenue,
Los Angeles, California;

Offense: Contempt of Court;

Date of Judgment: April 17, 1956;

Sentence:

I, the above-named appellant, hereby appeal to
the United States Court of Appeals for the Ninth
Circuit from the Judgment above mentioned on the
grounds set forth below.

Dated: April 17, 1956.

/s/ GERTRUDE FLETCHER,
Appellant.

/s/ WALTER L. GORDON, JR.,
Attorney for Appellant.

Grounds of Appeal

That said sentence and judgment are in violation of Appellant's Constitutional rights under the Fifth Amendment of the United States Constitution against self-incrimination.

[Endorsed]: Filed April 17, 1956.

[Endorsed]: Filed April 19, 1956.

In the District Court of the United States, Southern District of California, Southern Division
No. 1885-SD-W

Before: The Honorable Jacob Weinberger,
Judge Presiding.

In Re

GERTRUDE FLETCHER

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Appearances:

LAUGHLIN E. WATERS,
United States Attorney, By
HARRY D. STEWARD,
Assistant United States Attorney
in Charge of San Diego Office,
On Behalf of the Plaintiff.

WALTER L. GORDON, JR.,
Attorney at Law,
On Behalf of the Witness,
Gertrude Fletcher.

At 5:00 p.m., a recess is declared by the Court.

JOHN A. CHILDRESS,
Clerk.

By /s/ E. M. ENSTROM, JR.,
Deputy Clerk.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant: Gertrude
Fletcher, 131 East Century Boulevard, Los
Angeles, California;

Name and Address of Appellant's Attorney: Wal-
ter L. Gordon, Jr., 4104 South Central Avenue,
Los Angeles, California;

Offense: Contempt of Court;

Date of Judgment: April 17, 1956;

Sentence:

I, the above-named appellant, hereby appeal to
the United States Court of Appeals for the Ninth
Circuit from the Judgment above mentioned on the
grounds set forth below.

Dated: April 17, 1956.

/s/ GERTRUDE FLETCHER,
Appellant.

/s/ WALTER L. GORDON, JR.,
Attorney for Appellant.

Grounds of Appeal

That said sentence and judgment are in violation of Appellant's Constitutional rights under the Fifth Amendment of the United States Constitution against self-incrimination.

[Endorsed]: Filed April 17, 1956.

[Endorsed]: Filed April 19, 1956.

In the District Court of the United States, Southern District of California, Southern Division
No. 1885-SD-W

Before: The Honorable Jacob Weinberger,
Judge Presiding.

In Re

GERTRUDE FLETCHER

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Appearances:

LAUGHLIN E. WATERS,

United States Attorney, By

HARRY D. STEWARD,

Assistant United States Attorney

in Charge of San Diego Office,

On Behalf of the Plaintiff.

WALTER L. GORDON, JR.,

Attorney at Law,

On Behalf of the Witness,

Gertrude Fletcher.

Thursday, April 12, 1956—2:10 P.M.

The Clerk: Your Honor, I have not called the roll of the Grand Jury.

(Roll Call.)

The Clerk: A quorum is present, your Honor.

Mr. Steward: Now, if the Court please, this is in the matter of the investigation——

The Court: Just a moment, is everyone present concerned in this matter?

The Clerk: I was going to call it, your Honor.

The Court: Yes. Proceed.

The Clerk: Into the Grand Jury indictment of John Arthur Williams. The Grand Jury is present and convening, your Honor. I think counsel is here, is that right?

Mr. Steward: Right.

The Clerk: And the witness, Gertrude Fletcher, is that right?

Mr. Gordon: She is here, too, yes.

Mr. Steward: If the Court please, this matter was before the Grand Jury two weeks ago on March 29, 1956, at which time, it was continued to this date and the witness, Gertrude Fletcher, was instructed to return. If the Court please, speaking on behalf of the Grand Jury, the witness, Gertrude Fletcher, strike that. [1*]

The Grand Jury was duly convened on March 29, 1956. The witness, Gertrude Fletcher, was subpoenaed to appear before that body. She appeared,

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

was duly sworn before the Grand Jury, on March 29, 1956, and certain questions were propounded to her. She failed and refused to answer certain of the questions which are are follows:

And if I may, I will state, her questions and answers are of the three series pertaining to the same substance and answers hereto. One——

The Court: Are you——

The Clerk: Mr. Gordon, will you please state your name for us for the record?

Mr. Gordon: Walter L. Gordon.

Mr. Steward: Your Honor, in the interest of time, I might file with the clerk a memorandum for the Court setting forth the specific questions at this time and I also will give counsel a copy.

Mr. Gordon: Thank you very much.

Mr. Steward: The first question was:

“Question: Did you accompany your son, John Arthur Williams, to Tijuana, Mexico, on November the 20th?

“Answer: I refuse to answer——

“Question: Wait until I finish the question, please. On November the 20th or 21st, 1955?

“Answer: I refuse to answer on the ‘tution’ ground [2] that my testimony may incriminate me.”

The second question of the series of questions:

“Question: Do you remember, or did you see Thomas on November 20, 1955?

“Answer: I refuse to answer on the same ground, constitutional ground—on the constitution

that ground that my testimony might incriminate me.”

And then the third question of the series of questions pertaining to the same substance:

“Question: Think carefully, the only time that you saw Thomas and your son together was together in Los Angeles and that was on two occasions, is that right?

“Answer: Yes.

“Question: How about over here in the city jail in San Diego?

“Answer: I refuse to answer.

“Question: Did your son and you visit Thomas in the city jail?

“Answer: I refuse to answer on the same ground.”

Now, the same ground there, if the Court please, the witness is probably referring to the earlier claims of privilege under the provisions of the Constitution. Now, is that correct, Mr. Foreman, as I have stated it, so far?

Foreman of the Jury: Yes.

Mr. Steward: It is the position of this office, if [3] the court please, and the Grand Jury, that the witness could not justifiably rely upon any so-called claim of privilege against self-incrimination as set forth in the Constitution. It is our position that she is making a claim in bad faith and, in truth and in fact, there is no chance that her answers to those questions would tend to incriminate her.

Now, if the Court would like, I will make a brief statement as to where the investigation is going, so that the Court may properly apprise the situation as it pertains to this witness.

The Court: First, will you read the statute under which the proceeding is held? Now, do you have the statute, for the benefit of the reporter?

Mr. Steward: You are referring now to the statute?

The Court: Under which you are seeking relief at the present time.

Mr. Steward: That is under the inherent power of the Court, if the Court please. The Grand Jury is the Court's jury and she has refused.

The Court: I understand. Can you refer to the statute and read it so that the witness might know what the statute is which governs this proceeding.

Mr. Steward: Well, your Honor, we are in the process of [4] seeking, at this time, a contempt of court citation for civil contempt as distinguished from criminal contempt. If the Court had in mind of reading the criminal provisions, of course, we will be glad to do so, but we are more in a nature of wanting answers to our questions rather than incarceration for some period of time.

The Court: Very well. Now, the questions and the answers that you have just been reading. You have set them out, have you, from the reporter's notes or transcript?

Mr. Steward: Yes, your Honor. The foreman here has checked the official court reporter's notes

as against the exhibits which I have placed in the memorandum, is that true, sir?

The Court: I will ask counsel for the witness. Is that a correct, in your opinion, a correct transcript of the questions and answers?

Mr. Gordon: You have heard the questions asked you, and are they about the same that were asked?

The Witness: Yes, they were.

The Court: Will you stipulate that those are the questions and answers asked heretofore?

Mr. Gordon: I am satisfied they were, your Honor. On Counsel's representation and they were, I am willing to stipulate.

Mr. Steward: If there is any doubt, I have the court reporter. [5]

The Court: We have the reporter here.

Mr. Steward: Mr. Spencer is present in court. If there is any doubt I would be glad to call him.

Mr. Gordon: There is no doubt, your Honor.

The Court: Just a moment. We will hear what Mr. Steward has to say. You may proceed.

Mr. Steward: I might ask counsel if there is any change in position.

Mr. Gordon: Pardon?

Mr. Steward: Any change in position?

Mr. Gordon: Only change in position as to the questions, "Where do you reside? Do you have any children?"

Mr. Steward: We are not asking for a contempt citation with respect to those.

Mr. Gordon: Anything about a trip to Tijuana,

she stands on the same ground and I think our position is—I was very elated to hear you have written several articles on Constitutional law, your Honor. They were discussed at Los Angeles. With reference to the other questions asked, I think they can be disposed of in two minutes. It is so elementary to me; that she has her rights. May I say this: The trip to Tijuana is the very essence of the crime they are inquiring about.

From what I understand, her son is accused in having aided in the transportation of the marihuana across the line. [6] That is, he didn't do it himself. He made an agreement, I understand, you are charging him with, and that also they have a witness who has testified that the mother accompanied the son on this trip from Los Angeles to Tijuana. They are going into whether or not she accompanied the son on the trip which would certainly lay her liable to prosecution also, if she did, and then also, they want to know something about the facts about the trip and if she were, in fact, along.

Such testimony would certainly incriminate her and I have a case that I know your Honor is familiar with. This Weisman case, I think, where they asked a man merely whether or not he knew of certain people in China. That is 111 Federal 2d, 260. Referring to Page 260:

“In order to entitle witness to refuse to answer questions under claim of privilege against self-incrimination, the witness is compelled to do no more than show that the answers would likely be dangerous to the witness.”

And for that reason, she respectfully still refuses to answer.

The Court: Let me ask the witness. I will ask of the witness, first, let us have her name in the record. What is your name?

The Witness: Gertrude Fletcher.

The Court: Are you invoking this privilege in your own behalf or are you doing it so as to protect your son? [7]

The Witness: In my own behalf.

The Court: In your own behalf. Do you feel that you are incriminating yourself by answering those questions that have been referred to by the United States Attorney at this time or do you feel that it merely endangers the position of your son?

The Witness: Would you repeat that again, please? I didn't get it so good, your Honor.

Mr. Gordon: I will be glad to ask her.

The Court: Well, we will get her answer.

(Pending question read by reporter.)

The Witness: I feel I would be incriminating myself.

Mr. Steward: May I be heard again, your Honor?

The Court: Yes, go right ahead. You may be seated. (Indicating the witness.)

Mr. Gordon: Thank you.

Mr. Steward: We have no quarrel with the position, if the Court please, that, one, in fact, they tend to be incriminating questions. It is the position of the Grand Jury and our position, that on

the facts of this case, that such privilege is not availing because the witness, in fact, will not be incriminated by the answers.

Very briefly, if the Court please, the Grand Jury is investigating a violation by John A. Williams, occurring on or about November 21st of 1955. We intend to develop—that on or about November 20th, 1955, we intend to develop, [8] that one, John Benjamin Thomas, left the city of Los Angeles on or about that date for Tijuana, Mexico. We intend to show that he was in one car which I will refer to as an older car. On the same date and approximately the same time, John A. Williams drove an Oldsmobile vehicle from Los Angeles, likewise, to Tijuana. We intend to show that at this time that Williams drove the Oldsmobile, which I will refer to as the new car, for the purposes of distinction here, at the time he drove that car down to Mexico, that the witness, Gertrude Fletcher, was in the vehicle.

We would show, if the Court please, that the old car was parked by Thomas in Tijuana and the new car was parked by Williams nearby. We would show that Williams and another person then got out of the new car, went over to the old car and got in the old car, at which time Thomas left the old car.

We would show that Williams and the other person left, were gone for some time, several hours. During the time they were gone, the witness, Gertrude Fletcher, remained in the new car, together with Thomas. John Williams returned in the old car. Williams got out of the old car, as did the

passenger, and Thomas got in the old car and proceeded across the border. The witness did not leave the new car to our knowledge in Tijuana and presumably drove back from Tijuana into the United States and on up to Los Angeles in the company of [9] John Williams and one or two others.

We intend to show, if the Court please, that there is no evidence, not one scintilla of evidence, showing the witness, Gertrude Fletcher, had any criminal liability for the particular transaction. I have overlooked one thing. After Thomas got back in the old car in Tijuana and drove back to the United States by himself, if the Court please, he was stopped at the customs inspection point at San Ysidro and under the hood of the old vehicle was found twenty-two pounds of marihuana.

Now, at no place, if the Court please, has the witness, Gertrude Fletcher, ever been in any such proximity of this marihuana except that it happened to be in another car. The only thing we want from her, Gertrude Fletcher, is the truth about whether or not she was in Tijuana when Williams and Thomas were there. That is all. This Grand Jury is not investigating any possible criminal violation of Gertrude Fletcher. The investigation is predicated solely upon John Williams. I can hardly make it any more emphatic than that.

If the Court please, mere suspicion unstated, in fact, to my mind, is not sufficient reason for a person to come forth and claim the privilege against self-incrimination. I know counsel is just dying to state at this time the reason that I stand up and

say that Gertrude Fletcher is not under investigation means nothing because I cannot grant [10] immunity. That is true. It is certainly the state of mind of this Assistant and I certainly think I speak for the Grand Jury, is that true?

Foreman of the Jury: Yes.

The Court: Just a moment.

Mr. Steward: Just one more thing. That is what the facts disclosed.

The Court: Now, specifically what questions have you left that you require an answer to?

Mr. Steward: Those which I simply stated at the time I previously started to address the court.

The Court: There are two questions—apparently, she is willing to answer those.

Mr. Steward: No, they are only for the purpose of showing her state of mind. The first question, "Where do you reside? I refuse, I refuse to answer," which I say shows the state of mind of the witness is bad faith insofar as the claim of self-incrimination is concerned. She is really trying to shield her son.

The questions I want answered would be set forth from line 19 of page one over to line 8 of page two of the Memorandum for the Court which I filed a few minutes ago.

The Court: Just read them again.

Mr. Steward (reading):

"Question: Did you accompany your son, John Arthur [11] Williams to Tijuana, Mexico, on November the 20th * * *"

There was an interruption.

“Answer: I refuse to answer.

“Question: Wait until I finish the question, please. On November the 20th or 21st, 1955?

“Answer: I refuse to answer on the ‘tution’ (t-u-t-i-o-n) ground that my testimony may incriminate me.”

That would be the first question, your Honor. It is really one single question. It is broken up because of the interruption by the witness.

The Court: Now, the next question.

Mr. Steward: Do you want to go through all of them?

The Court: Just those specific questions you require now.

Mr. Steward: All right, the next question:

“Question: Do you remember, or did you see Thomas on November 20, 1955?”

Mr. Steward: Then the answer she gave again was claiming privilege and then the third question and I have put one or two questions and answers. Proceeding then for the purposes of clarity:

“Question: Think carefully, the only time that you saw Thomas and your son together was together in Los Angeles and that was on two occasions, is that right?

“Answer: Yes. [12]

“Question: How about over here in the city jail in San Diego?

“Answer: I refuse to answer.

“Question: Did your son and you visit Thomas in the city jail?

“Answer: I refuse to answer on the same ground.”

Now, those are the questions, your Honor, and on a factual situation with respect to the last question, I would advise the Court, this is some time after November 20th of 1955, after the offense was committed, and the witness participates in the visit to the jail. It would be very innocuous, your Honor. It would have no criminal liability at all, but we want the testimony as to that particular visit.

The Court: In view of the statements made by the United States attorney, what is your answer, Mrs. Fletcher, at this time?

Mr. Gordon: She refuses to answer, your Honor, on the ground her testimony might tend to incriminate her and I would like to make a statement.

The Court: I would like to have her make that statement.

Mr. Gordon: Do you wish to answer those questions, the three questions as enumerated?

The Witness: I refuse to answer on the constitutional ground that my testimony may incriminate me.

The Court: That is all you have to say to the Court, [13] is that it?

Mr. Gordon: That is it, your Honor.

The Court: Now, what is it you want to say?

Mr. Gordon: I might state, if you will notice, that counsel has been very courteous and he has been very obliging and perhaps, in a way, he would like to grant immunity, but the privilege against self-incrimination is available to a witness before the Grand Jury even though no proceeding has

started or commenced against him. That is 142. That is, counsel, 142 U. S. 547.

In this instance, if your Honor please, I think counsel stated, he said, your Honor, that all we want to know is about this trip and there is no criminal violation as far as we know. Now, say this woman got on the stand and should reveal that she did take a trip and in eliciting questions from her, that they would elicit the fact that maybe she did have some criminal complexity, then probably I would be probably be advised by counsel that perhaps I should have stood on my privilege because this woman is in it now. This lady is standing on her privilege that the whole setup of any trip of Tijuana is in good faith, a violation of her constitutional rights and, therefore, she refuses to testify and she stands on that privilege.

Thank you very much for your indulgence.

Mr. Steward: If the Court please, at this time, I and [14] the foreman request that the witness be found in contempt of court and committed to the Marshal until such time she sees fit to answer the questions, generally asserting that she does not have justifiable good faith claim of self-incrimination. Is that true, Mr. Foreman?

Foreman of the Jury: That is correct.

The Court: In view of what has been proposed to the Court by the United States attorney, under the circumstances as they appear here, it is the present opinion of the Court that the privilege is not properly invoked and the witness is ordered to go back to the Grand Jury room and answer those questions at this time.

Mr. Gordon: Your Honor, is there any way that we can just save your Honor's time and—or if you would rather have her go back upstairs and refuse to answer and then come back down here? If the Court please, I think we would refuse to answer them right at this time in front of the Grand Jury.

The Court: Let her state what her position is.

Mr. Gordon: I understand, please——

Mr. Steward: Your Honor, before she makes that statement, I wonder if the court would inquire of the witness and her counsel, if there is anything else they want to say with respect to her privilege; if they have said everything they desire to say.

Mr. Gordon: I might say, I have never been classified [15] as a fortune teller and the whole basis of counsel's accusation against this woman is on the grounds he does not think she is in good faith so the burden is upon him to establish that she is not in good faith and I certainly think he has a very onerous burden in making this attempt to force this woman to answer these questions, which I think could not be sustained.

The Court: You were about to state?

Mr. Gordon: She would not answer the questions before the Grand Jury. As a matter of fact, I have advised her in this. She is in very much good faith, your Honor, and I would like to approach your Honor in chambers so that you can ascertain the matter of good faith. This is so elementary to me, that her position is based upon good

faith, your Honor, that I should not waste the time of the Court or in any Circuit Court. I think I can establish that. I do that in an offer of good faith to your Honor.

The Court: I shall ask her, do you or do you not refuse to answer those questions by going back to the Grand Jury room for that purpose?

The Witness: I refuse to testify on the constitutional ground, that my testimony would incriminate me.

The Court: Very well. Is there anything further, Mr. Steward?

Mr. Steward: Well, your Honor, I wonder, for the purpose [16] of the record, if the Court would instruct her to answer those particular questions we have shown she has previously refused to answer and instruct the witness to answer that question then before the Grand Jury and let her now refuse if she so desires.

The Court: She has already stated she refuses to go back to the Grand Jury room and answer the questions.

Mr. Gordon: That is true.

The Court: The same questions stated a moment ago, read by the United States counsel.

Mr. Steward: I read several over and above three questions.

Mr. Gordon: Three questions.

Mr. Steward: First three, so long as there is no misunderstanding.

Mr. Gordon: There is no misunderstanding. Your Honor, before you make your finding, may

I present certain cases to you and I think the Weisman case, your Honor, is so very clear?

The Court: Well, I am glad the situation is clear to somebody. We have been studying this matter here some little time and we find considerable law on the subject matter.

Mr. Gordon: I am sorry to make that statement.

The Court: I am not criticizing you at all.

Mr. Gordon: My point is this, I have read so little law that is clear to me, because of the fact I have read so little—— [17]

The Court: I understand. I am inclined to adjudge her in contempt at this time, but I will continue the matter until—when do you want to continue it?

Mr. Steward: We are ready now, for that matter, so any time the court desires. The sooner the better as far as I am concerned, tomorrow?

The Court: Tomorrow, yes.

Mr. Gordon: Well, your Honor, as far as tomorrow is concerned, if you have already made your adjudication, you might as well just—we will waive time and you do what you are going to do now and then we will——

The Court: On Monday or Tuesday, rather, if you prefer to continue this until Tuesday, I will continue it until Tuesday.

Mr. Gordon: When you say continued to Tuesday, your Honor, will you allow us to submit any authorities Tuesday or are you just going to make a finding?

The Court: Well, I can't prevent you from giving me anything that is pertinent to the subject matter.

Mr. Gordon: I didn't know whether to come armed with any authorities or come armed with something that might help you out.

The Court: It appears to me now that she is in contempt of court and I am continuing this matter for a day or two. [17-a]

Mr. Gordon: Your Honor, are you aware of the particular charge in this case?

The Court: Yes. I sat through the trial in the case and I think I know what it is all about. The case was tried before a jury and I have in mind some of the happenings during the progress of that case.

Mr. Gordon: Yes, your Honor.

The Court: However, that is separate and apart from this proceeding.

Mr. Gordon: I think the charge in this case is one of—could you state the specific charge, counsel?

Mr. Steward: You mean under investigation?

Mr. Gordon: Yes.

Mr. Steward: It is a violation of Title 18, Section 545, in count 1, which is smuggling merchandise, in this case, approximately 22 pounds of marihuana. The second count would be title 18, 545, the concealing, facilitating the transportation of merchandise, likewise, marihuana. The third count would be one of the internal revenue counts.

Mr. Gordon: What count would that be?

Mr. Steward: Well, don't hold me too close to

this, Title 26, U.S.C. 2455. I am not positive of the importance. It is importing it without paying the tax.

Mr. Gordon: All right.

The Court: We are considering during this proceeding, [18] that the witness has had a hearing by the court to determine whether she is justified in claiming the privilege against self-incrimination, is that right?

Mr. Gordon: Yes, your Honor.

The Court: Before making a finding I would like to think the matter over for a day or two.

Mr. Gordon: Yes, your Honor.

The Court: And, of course, if, in the meantime, the witness desires to take any other action she has the opportunity of doing so.

Mr. Gordon: Thank you, your Honor.

The Court: Meaning, of course, that she may purge herself if she sees fit in answering the questions before that time.

Mr. Gordon: Yes, your Honor, and you want to continue it until what time?

The Court: When is it convenient?

Mr. Gordon: May I be excused for a moment?

The Court: And she may come prepared when we do reconvene to meet the situation such as it may be.

Mr. Gordon: Yes, your Honor.

The Court: We can't delay it too long, for the reason that——

Mr. Gordon: Tuesday is all right, your Honor.

The Court: Tuesday all right, Mr. Steward? [19]

Mr. Steward: Yes, your Honor, that will be fine.

The Court: Tuesday, what time, 2:00 o'clock?

Mr. Gordon: That will be fine with me. I might say it was raining very hard in Los Angeles. We had to catch a plane to come out here today.

Mr. Steward: Your Honor, I am sure the Grand Jury need not be present at that time, is that true? This is strictly a court matter?

The Court: Not unless, of course, there is a change in the status. That matter can be arranged. Very well, the matter is continued and the witness ordered to be here at that time.

Mr. Gordon: Your Honor, she is making these trips and I don't think she has received any expenses. Is there any way as a witness that she can be granted expense money?

Mr. Steward: That first trip, she was here under Grand Jury subpoena. She certainly is entitled to pay. If she will come into our office we will take that matter up.

The Court: You take that matter up with the United States attorney.

Mr. Gordon: Thank you, very much.

Mr. Steward: I believe that is all, your Honor. I think we can reconvene upstairs.

The Court: Is the Grand Jury ready to [20] report?

Foreman of the Jury: There is a little more business and we are ready, your Honor.

The Court: You may resume your deliberations.

(Conclusion of present hearing.) [21]

Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at San Diego, California, this 5th day of May, A.D. 1956.

/s/ HELEN B. SALISBURY,
Official Reporter.

[Endorsed]: Filed May 7, 1956.

April 17, 1956—2:25 P.M.

Appearances:

LAUGHLIN E. WATERS,
United States Attorney, by
HARRY D. STEWARD,
Assistant United States Attorney in
Charge of San Diego Office, and
THOMAS H. LUDLOW,
Assistant United States Attorney,
On Behalf of the Plaintiff.

WALTER L. GORDON, JR.,

Attorney at Law,

On Behalf of the Witness, Gertrude
Fletcher.

The Clerk: We had a matter, your Honor, temporarily scheduled for 1:45. It was a setting. I don't believe the defendant is here at the moment. Do you want this other matter?

The Court: I think the marshal went upstairs with the prisoner.

The Clerk: Do you want this other matter called up at this time?

The Court: We will proceed with the matter before the court.

The Clerk: This is in the Matter of Gertrude Fletcher, further hearing on motion of the United States Attorney that witness be found in contempt and so forth.

Mr. Gordon: Ready for the defendant, your Honor.

Mr. Steward: The government is ready, your Honor.

The Clerk: The witness is present, I understand.

Mr. Gordon: Yes; come forward, Mrs. Fletcher.

The Court: Do you wish to present anything further?

Mr. Gordon: Yes, your Honor. May I have the privilege of calling the U. S. Attorney to the stand? Even by virtue of a stipulation I think we can reach—I don't want any error in the record with

reference to what the facts are in this case [1*] and——

Mr. Steward: Do you want me to make a statement insofar as the investigation is concerned?

Mr. Gordon: We know what your investigation has disclosed. These are the things that I know of and these are the things that my client is fearful of, your Honor.

The Court: We have no reason specifically why she did not answer the questions at the last hearing; merely, she stood on her constitutional rights as she claimed, without any explanation.

Mr. Gordon: I thought perhaps the revelation to you what the investigation had revealed—I tried to get it in the form of a stipulation—would reveal to you the nature of the investigation. If counsel would just make a stipulation of those facts——

Mr. Steward: I would be glad to state them and if you find them in error anywhere along the line you may correct me; otherwise, we will enter into a stipulation.

Mr. Gordon: All right.

The Court: I think she may be seated.

Mr. Steward: If the Court please——

Mr. Gordon: Do you want me to remain here, your Honor, or——

The Court: Well, suit yourself, either at the table or wherever you would like.

Mr. Steward: If the Court please, on December 7 of [2] 1955, a federal grand jury sitting in the

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

Southern District of California returned a three-count indictment against John Benjamin Thomas, being case Number 25,683-SD, and with counsel's permission I will refer to that case as the official court file and I will not proceed to read it into the record at this time.

The essence of that case, however, was that it charged that Thomas, on or about November 20 of 1955, in San Diego County, did, in Count 1, smuggle approximately 22 pounds of marihuana; in Count 2, that he concealed said 22 pounds of marihuana, and Count 3, that he did unlawfully import the said 22 pounds of marihuana without having paid the special tax.

Mr. Gordon: Right there may we pause and may a copy of the indictment be introduced into the record, please, your Honor?

The Court: Does that have any bearing?

Mr. Gordon: Yes, if the Court please, it calls for reference of a particular case.

The Court: Putting the indictment in the record—is that part of the record?

Mr. Gordon: I read it in other cases and they did it in all other cases. Maybe they did it with surplusage and I notice they did it and I didn't want to depart from precedence, your Honor. [3]

The Court: Any objection?

Mr. Steward: No objection, but I think what counsel is referring to is another indictment. Which one are you talking about?

Mr. Gordon: I am talking about the John Williams indictment.

Mr. Steward: That was not the one I am referring to. That was John Benjamin Thomas.

The Court: The Williams matter is now pending. The Thomas matter has been disposed of.

Mr. Gordon: That is right. That is right.

Mr. Steward: I mentioned the Thomas matter because the court heard that matter when it came on for trial before a jury and I know the court is aware of the evidence which was introduced at that time, thereafter, it appearing that John Williams was a party to the transaction in which John Benjamin Thomas was convicted.

The Court: That is, he was a witness called into the trial of the case.

Mr. Steward: He was a witness, your Honor, that was called to testify at the John Benjamin Thomas case. What I am now saying, though, that subsequent investigation disclosed the fact that Williams was one of the parties. So he and Thomas were the two parties that were involved in that particular 22 pounds of marihuana transaction. [4]

Mr. Gordon: And that he was a government witness, that is, Williams was a government witness, is that right, counsel?

Mr. Steward: He was called as a witness for the government.

Mr. Gordon: Right.

Mr. Steward: The evidence and subject matter of the present grand jury investigation, as I understand it, is that on or about the 20th of November of 1955, John Benjamin Thomas drove from Los Angeles to Tijuana, Mexico, in a vehicle owned by

John A. Williams. John A. Williams, in the company of one Ruth White and the witness, who is present before the court, Gertrude Fletcher, and one other person, drove a new vehicle, I can't recall what it was, a new Oldsmobile or something, from Los Angeles, likewise, to Tijuana.

The two vehicles, the one occupied by Thomas and the one occupied by Williams, parked near a building in Tijuana. Williams and Ruth White got out of the new car and went over to the old car where Thomas was seated. Thomas got out of the old car, at which time Williams and Ruth White got into the old car and drove away. Thomas went then to the new car and sat in the new car with the witness, Gertrude Fletcher, for a period of approximately an hour and a half, an hour or two hours, somewhere along in there; at which time Williams [5] and Ruth White returned in the old car, got out of the old car, and John Benjamin Thomas got into the old car. John Benjamin Thomas then proceeded directly from that point to the border at the port of entry, San Ysidro, California, at which time he was stopped. The old vehicle was searched and the 22 pounds of marihuana was found concealed therein.

We believe that Williams, Ruth White, the witness, Gertrude Fletcher, and one minor child proceeded, or at some period, proceeded from Tijuana back to Los Angeles, California.

Now, that in general, is the essence of the case pending against Williams and is the subject matter of the grand jury investigation.

I reiterate again, if I may, if the Court please, as I stated last Thursday, when the grand jury was here and my comments were, to my recollection, adopted by the foreman, the grand jury is not, repeating—is not investigating Gertrude Fletcher. We have no evidence tending to show that she is criminally a part of any transaction involving marihuana on November 20, 1955. The grand jury is interested in Gertrude Fletcher solely and simply as a witness. We desire to ascertain from her whether or not Williams was in Tijuana on November 20. No questions have been asked of her whether she knew of any marihuana being there. No questions like that are indicated because we have absolutely no evidence tending to show that she had any such knowledge. [6]

In other words, the most that could be said of our questions is, we are asking her to identify a participant in the transaction occurring in Mexico. That is all.

Mr. Gordon: May I say one other thing?

The Court: Merely as to her presence in Mexico at that time, in company with Williams, is that it?

Mr. Steward: That is correct. If I may, one other thing. Our second question or third question concerned whether or not she had seen or visited with her son, with John Benjamin Thomas, in the city jail at San Diego.

The Court: And that was after this occurrence?

Mr. Steward: After the occurrence.

Mr. Gordon: Would you repeat what you said, counsel, please?

Mr. Steward: Yes, if I may refer to our memorandum for the Court. Last Thursday, the third question set forth therein which reads as follows:

“Question: Did your son and you visit Thomas in the city jail?”

“Answer: I refuse to answer on that same ground.”

That, if the Court please, was after the commission of the offense. The only thing we want to interrogate that witness about is conversations had between Thomas and Williams. That is all. None of which, if the Court please, would tend to, in any manner, incriminate this witness. [7]

The Court: Is it material to the issue, the matter as to——

Mr. Steward: As to Williams, yes, your Honor. It would tend to show knowledge on Williams' part of the earlier transaction; not knowledge on the witness' part, just on Williams' part.

Mr. Gordon: If the Court please, I would like to call the U. S. Attorney as a witness just for two questions, just for two questions.

The Court: If he will submit.

Mr. Steward: Surely. I have nothing to hide.

Mr. Gordon: All right, will you take the stand, please?

HARRY D. STEWARD

called as a witness by counsel for the witness, Gertrude Fletcher, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Gordon:

Mr. Steward: Would you mind if I take my file?

Mr. Gordon: It is not going to be that deep, counsel. I will probably want my file.

The Clerk: State your name for the record.

The Witness: Harry D. Steward, Assistant in charge of the United States Attorney's office, San Diego, California.

Q. Mr. Steward, you have been assisting the federal grand [8] jury here in the investigating of crimes in this locale?

A. In many instances, yes.

Q. And you are interested in ferreting out crime, no matter who it has been committed by, is that right?

A. That is my oath of office.

Q. You have no right to offer any immunity to any witness who should testify before this grand jury, is that right?

A. Of course, that is a legal opinion.

The Court: That is a question of law.

Mr. Gordon: You have not offered Mrs. Fletcher any immunity, have you?

A. No, I have not.

Q. So when you state what your intentions are,

(Testimony of Harry D. Steward.)

you merely are basing that upon your state of mind as to how the evidence is at present, isn't that right? That is, what your intentions are towards Mrs. Fletcher when you state that you are not interested—— A. Well, no——

Q. ——in Mrs. Fletcher in any criminal prosecution? I will ask you, if her testimony did in fact reveal a crime, you would not hesitate to prosecute her, would you?

A. I certainly would. I certainly would.

Q. Would or wouldn't?

A. I would hesitate to prosecute.

Q. Even though a crime has been [9] committed?

A. Even though by some stretch of the imagination she is implicated and in view of the grand jury and my statements before this court, I would be extremely hesitant about prosecuting her for anything disclosed by her as the result of her testimony in aid of the government's investigation in this particular case.

Q. I will ask you this: If your evidence thus far, up to date, doesn't reveal that she did ride from Los Angeles, California, with her son, John Williams, on this occasion when Thomas was engaged in smuggling narcotics? A. You say——

Q. Does your evidence reveal she was riding with her son, John Williams, on this date when Thomas is accused of smuggling marihuana?

A. When I make the statement now, I am re-

(Testimony of Harry D. Steward.)

ferring to matters other than that—well, I won't qualify it at all.

The Court: You mean in the case that was tried or are you inquiring into what the evidence is now before the grand jury?

Mr. Gordon: Before the grand jury.

The Court: I don't know if he has to answer unless he wants to.

Mr. Gordon: That is a matter——

Mr. Steward: I believe I stated from the floor there was evidence showing that she had ridden in the Williams car [10] from Los Angeles to Tijuana on the same date that Thomas drove the other car to Tijuana.

Q. Now, it is the theory of your case that though Williams rode in another automobile he aided and abetted Thomas, isn't that right?

A. That would be true under Title 18, USC, Section 2.

Q. And you intend to question Mrs. Fletcher with reference to what happened in that automobile and what happened on that trip, isn't that right?

A. No, my question to her, as I recall from the transcript, was whether or not he drove it before anything was—whether she had gone to Tijuana in his car. I am sure that you appreciate, counsel, I am only in the grand jury room as a representative of the office.

Mr. Gordon: Surely.

Mr. Steward: As such I can tell you what I would expect to do and what I wouldn't expect to

(Testimony of Harry D. Steward.)

do. I asked the witness if she had seen Thomas on November the 20th of 1955, and I also asked her if she had accompanied her son, John Arthur Williams, to Tijuana on November the 20th, 1955.

Q. This November 20th, sir, is the date that Williams is alleged to have aided Thomas by accompanying Mrs. Fletcher in another automobile while Thomas was in another, still another automobile, isn't that right?

A. That would be true. [11]

Mr. Gordon: All right, no further questions, your Honor. Thank you, very much. Your Honor, I think the record is complete as far as we went and I think that I would like to take the stand and tell you that—may I take the stand, please?

The Court: Well, just wait until they get through consulting.

Mr. Gordon: I am sorry, your Honor.

The Court: Repeat your request.

Mr. Gordon: May I take the stand and testify? I understand the burden is upon us to show justification. I am trying to assume that burden. May I?

The Court: Very well.

WALTER L. GORDON, JR.

having been first duly sworn, testifies as follows:

The Clerk: Be seated, please, and state your name for the record.

Mr. Gordon: My name is Walter Gordon. I am a duly licensed attorney at law and I am licensed to practice in this court. I have been retained by Mrs. Gertrude Fletcher and she has presented her problems to me with reference to this testimony and after hearing the things that she has told me, I have advised her not to testify in answer to the questions propounded to her by a representative of the grand jury.

Mr. Steward: Now, may I interpose an objection and a [12] motion to strike, if the Court please, on the grounds that the opinion of the attorney has no place in a case such as this. It is the state of mind of the witness, not the advice which she has been given by counsel and I am sure Mr. Gordon is in all good faith, but I don't think that statement should become a part of the record.

Mr. Gordon: This goes to the matter of good faith which counsel says my client is without. I am indicating that she is in good faith following her attorney's advice.

Mr. Steward: And on the further grounds it is the opinion and conclusion of the witness.

Mr. Gordon: May I say further, your Honor——

The Court: Just a moment.

Mr. Gordon: Yes, your Honor.

The Court: You have already stated your posi-

(Testimony of Walter L. Gordon, Jr.)

tion, or what her position is. She stated her position. That is what is important. You are an attorney at law and you are representing her and now she has stated heretofore——

Mr. Gordon: Yes, your Honor.

The Court: There is nothing you can add by stating your conclusions, your opinion.

Mr. Gordon: No, except——

The Court: Whatever rights she has here is given to her by the law regardless of any opinion you may have.

Mr. Gordon: May I answer that by saying her good faith [13] was challenged, your Honor, not that her legal position was questioned. Counsel questioned her good faith. Consequently, I have the right to testify as to her reason for receiving advice, going to the matter of her good faith.

Mr. Steward: Your Honor, the question is whether or not the privilege arises in this case. The advice of counsel on that question would have no bearing whatsoever and by the same token I am attacking the bad faith portion of this as it pertains on the question whether the privilege can properly be claimed in this case. I say then it can't. I say the witness is attempting to shield her son. She is not being incriminated and she would not tend to be incriminated by answering these questions.

Mr. Gordon: I move to strike counsel's remarks because one is as fair as the other.

The Court: Now, let's not go into that. The

(Testimony of Walter L. Gordon, Jr.)

question of good faith is not before the court. You are not being interrogated or questioned. You are an officer of this court.

Mr. Gordon: That is right.

The Court: And I take it every lawyer who appears here is in good faith, unless that good faith is in question, and it is not here.

Mr. Gordon: Yes, your Honor.

The Court: The motion is granted to strike the testimony of counsel. Anything further? [14]

Mr. Gordon: No, your Honor.

The Court: Do you have anything further, Mr. Steward?

Mr. Steward: Your Honor, I have here, if I may, a copy of a judgment order of commitment in a civil contempt which was signed by Judge Peirson M. Hall, sitting in this district, under factual situations that were similar to the one at bar. If the Court please, first, pursuant to finding this witness in contempt, civil contempt for her failure to obey the court's order, we would like to propose to the court a formal written judgment of order of commitment, reciting the factual situation as pertaining to this case, but if the court would like, I would be only too happy to file this other order of commitment in the case of Samuel H. Kasinowitz which was appealed to the Ninth Circuit Court of Appeal and the opinion shows no attack made on the form of the order and no other procedure followed therein.

The Court: Mr. Gordon, do you have anything

(Testimony of Walter L. Gordon, Jr.)

further to add insofar as Mrs. Fletcher is concerned? She is the one who is concerned here. She has already stated her position heretofore. Is there anything further you want to add?

Mr. Gordon: No, your Honor.

The Court: Her position is now as it was the other day, is that it?

Mr. Gordon: Yes, your Honor.

The Court: As to these three questions? [15]

Mr. Gordon: Yes, your Honor.

The Court: Let me see the form of your order, **Mr. Steward.**

Mr. Steward: Is this to be marked as an exhibit, your Honor?

The Court: No, it is an order in another case, isn't it?

Mr. Steward: It is a copy of an order in another case.

The Court: That won't help us here.

Mr. Steward: That concludes it, your Honor. We will draft the necessary order upon the Court's findings in this particular case. By way of clarification, your Honor, we stated last Thursday the matter, as far as we are concerned, is to be treated as a civil contempt in this Court, in that we are seeking to secure obedience to the Court's order. We are not seeking punitive measures at this time. The order which was handed to the clerk a moment ago was predicated upon the theory of civil contempt and the Ninth Circuit Court of Appeals so considered it.

(Testimony of Walter L. Gordon, Jr.)

Mr. Gordon: Your Honor, before you make a ruling, you remember I presented some authorities the last time. I would like to call your attention to those cases.

The Court: May I ask a question. I think it is in the record that there has been an indictment returned against Williams.

Mr. Gordon: Yes, your Honor. Maybe I am wrong. [16]

Mr. Steward: I mentioned the indictment against John Benjamin Thomas and I will now refer to the fact that last Thursday the Federal Grand Jury of San Diego returned a three-count indictment against John A. Williams, being indictment No. 25,929, and I might incorporate that indictment in my statements here by reference if that meets with counsel's approval.

Mr. Gordon: No objection.

The Court: Do you have further inquiry or investigation before the Grand Jury in relation to that case?

Mr. Steward: Yes, your Honor.

The Court: All right, Mr. Gordon, what is it you have there?

Mr. Gordon: I would like—your Honor, this is in a form. I presented U. S. authorities and I would like to show you one on all 4's, I think, with this case, your Honor.

The Court: What is the case?

Mr. Gordon: This is *ex parte* Crowe, 126, and this is a California Appellate Court case and I

(Testimony of Walter L. Gordon, Jr.)

know you probably have too much respect for those——

The Court: You can't presume anything.

Mr. Gordon: 126 California Appellate, 617. This is a book by Judge Fricke.

“Thus, where the answer to the question would tend to show the presence of the witness at the time and place that [17] the criminal offense was committed, he may properly refuse to answer it.”

And thus I just would like to——

The Court: That doesn't help me at all. I just can't rely on a text authority's version.

Mr. Gordon: Yes, your Honor.

Mr. Steward: Your Honor, I might state in that connection something I overlooked and that is the fact, that the evidence would show, that the vehicle in which John Benjamin Thomas was riding, which I have referred to as the old vehicle, was parked near the vehicle in which the witness, Gertrude Fletcher, was in, in Tijuana. That would be geographically, at least a mile, probably two miles, from the border, the port of entry at San Ysidro, California. The offense occurred at the border which would be two miles away from where Thomas and the witness Fletcher were together. This, if the Court please——

Mr. Gordon: May I ask something?

Mr. Steward: ——would be ascertaining the fact that at a time prior to the commission of the offense, a witness is able to identify a suspect.

Mr. Gordon: May I call your attention to the

(Testimony of Walter L. Gordon, Jr.)

fact that, counsel, first, the offense occurred. Certainly, we know that in aiding and abetting, one participant could remain in the City of Los Angeles and still be a conspirator and that when [18] he says the offense occurred, he must be thinking only of the attempted bringing of the marihuana across the line. If it please your Honor——

The Court: Well, of course, that is where, technically, the offense occurred, as to this transportation and smuggling into the United States, the transportation of marihuana. However, I can see your point if it involves a situation of that kind. Of course, he may be involved even though he is not in Mexico if it is that kind of a case.

Mr. Gordon: That is right.

The Court: Let me see the form of your order that you are working on in this case. We will have a recess for a few minutes. I am continuing the Fletcher matter until about 4:30.

Mr. Gordon: Yes, your Honor.

The Court: In the meantime, we will go ahead with the trial of the other case. Call in the jury.

(Thereupon, the Court resumes trial and recess is had in present proceeding.)

(Recess.)

4:30 P.M.

The Court: Now, then, you call the Fletcher matter.

The Clerk: This is in the matter of the applica-

tion of the Government to find the witness, Gertrude Fletcher, in contempt. I believe Mr. Gordon is here and the witness is here.

Mr. Gordon: Yes, your Honor. [19]

The Court: Is there anything further to present on either side?

Mr. Gordon: Not from the witness, your Honor.

Mr. Steward: We have filed, your Honor, a proposed judgment of order of commitment in the matter. I might state, I neglected to do earlier, I have given counsel a copy of this proposed order and I believe earlier today I gave him a copy of the memorandum for the Court in support of the order for civil contempt and I think for the purpose of the record, last Thursday, I also gave counsel a copy of the memorandum which was originally filed in this case and, I believe, by improper heading. The heading there was United States of America versus John Arthur Williams. I think probably the correct heading should have been: In re Gertrude Fletcher, as is presently set forth in the last two documents filed by the plaintiff.

The Court: There is nothing further then?

Mr. Gordon: No, your Honor.

The Court: It is now the judgment of the Court that you be committed to the custody of the United States Marshal and by him held until you, Gertrude Fletcher, return to the Grand Jury and answer the questions which have been propounded to you and which were ordered by the Court to be answered as heretofore recorded in the proceedings and as set out in the judgment and order that I am about

to sign or until the further order of the Court. [20]

Mr. Gordon: May I be heard now on another matter, if your Honor please?

The Court: Yes.

Mr. Gordon: I am very sincere in my representation of this defendant in this matter and I wish to stand on the grounds that we have already set forth. I would like, at this time, to file notice of appeal which I will present in duplicate to the clerk and ask that he respectfully present them to your Honor at this time. There is a place thereon provided for bail. I wish to urge upon your Honor to allow this defendant's application for bail.

I believe that the citations I have previously furnished you, though they did not convince your Honor, I believe that they certainly set up grounds for probable cause. I ask that you set a reasonable bail. This lady is a mother, married and is the mother of approximately four children. She owns her property in Los Angeles. Her husband is a railroad man and I feel a reasonable bail would be \$500.00 to answer all processes of the Court.

I do not feel, your Honor, as already indicated that earlier I mentioned the fact that I thought it was elementary and you indicated if I thought it was, I wouldn't have brought this up. I agree with you there and I ask that you set bail. Your Honor, I object to the substitution of counsel. I feel that to come in with an 18th player on a football team is a [21] little unfair here.

Mr. Steward: I can address the Court.

The Court: He is a member of the staff of the United States Attorney's office.

Mr. Gordon: I will waive any objection.

Mr. Steward: He has researched the point which will be given to the Appellate Court. I think it indicates what I want him to cover.

The Court: The Court will permit him to speak.

Mr. Ludlow: I would like to direct my remarks solely to the matter which has been raised, mainly, the matter of bail pending appeal. The woman is in civil contempt. The purpose is coercive. There is no crime charged here, no crime which would warrant the granting of bail. The sole purpose is coercing. The purpose loses efficacy if the bail is granted. We have a case, Howard versus the United States, which is an Eighth Circuit Court case and it involves a witness who gave false and evasive testimony before the Grand Jury. The Court stated at the conclusion of its opinion and I quote:

"Our conclusion is that a District Court has power to deal summarily with a witness before a Grand Jury who is guilty of a patent evasion equivalent to a refusal to give any material information. The judgment appealed from is affirmed. It is apparent that, to serve any useful purpose, it will have to be enforced promptly. Therefore, the order of this [22] Court admitting the appellant to bail is vacated, and mandate will issue forthwith."

This is Howard versus the United States, a 1950 case, Eighth Circuit, 182 Fed. 2d, page 908. I read from page 915.

We feel that that is applicable here. The purpose to be served by a commitment here is coercive and it will lose all force if bail is granted in this case. We might just as well throw it out the window. For that reason the Government resists any motion for bail at this time.

Mr. Gordon: Of course, I expected the Government to oppose it. Of course, it is coercive. It is very coercive. As a matter of fact, to state on one hand that it is strictly civil and then on the other hand to attach a jail sentence to it, naturally, immediately suggests that it is quasi-criminal in nature and we have all known for a long time that any contempt matter is a quasi-criminal matter.

As a matter of fact, in a contempt action the same privileges are invoked. That is, a witness does not even have to testify in a quasi-criminal matter. If counsel had wished to call my witness to the stand he couldn't have done so, because it is quasi-criminal and to state unequivocally that a person does not have the right to appeal to a higher court and thereby be granted bail, in spite of the fact, that there is a very close legal problem involved, is, I think, not only coercive, but I think that such a suggestion from [23] Government counsel is rather abusive and is one that certainly doesn't tend to give credit to the United States Government. I frankly fear that it is their policy in this Court to give every man a privilege, particularly, if he is in good faith to invoke all remedies of the law to protect his rights. And to summarily put him in jail and say this: you are going to stay in jail until

your case is heard whenever it is heard by the Circuit Court, is, in fact, to take away from him the very rights which we are granting him because certainly that is, in form, intimidation, and to threaten a man with jail saying you have no right to bail pending your being heard in the Circuit Court, is not to guarantee those rights which the Constitution gives, but you deprive him of his rights through intimidation.

The Court: Of course, you have the right, if you wish, to go before the Court of Appeals. That is your proper procedure. You have that right to go before the Court of Appeals, but I don't feel, under the circumstances, that I should go any further in the matter.

Mr. Gordon: It is a matter of delay when you go before the Circuit Court of Appeals because they naturally would like to have the transcript and the transcript, I imagine, will take some period of time unless we indulge in a stipulation and I imagine the Circuit Court of Appeals would not want to go up on the stipulation. They would like to have the actual [24] transcript. Those are formal things that we will have trouble with and I don't believe it is an imposition upon this Court, that a woman, such as the type of woman you have here, who stands on her constitutional guarantees, I don't think it is an imposition for you to grant bail in such a matter as this.

The Court: I don't think that I should, that I should act in the matter. I think if you feel that

you are entitled to bail, I think you might make your wants known to the Court of Appeals.

Mr. Gordon: All right. Thank you very much.

The Court: I will sign the order.

(Court adjourned.) [25]

Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at San Diego, California, this 19th day of May, A.D. 1956.

/s/ HELEN B. SALISBURY,
Official Reporter.

[Endorsed]: Filed May 22, 1956. [26]

[Title of District Court and Cause.]

DOCKET ENTRIES

Filings—Proceedings

1956

Apr. 17—Ent. proc. on 4/12/56; Walter L. Gordon, atty. for wit. Fletcher, fld. memo of govt.; quorum G/J present in open court; ent. mot. govt. that deft. be found in contempt & committed cust. Mar. until she answers questions; ent. proc. on objs. wit. to questions; ent. finding that claim privilege not well taken & ent. ord. directing wit. ans. questions as propounded; ent. proc. wit. declines to ans. questions; ent. ord. cont. to 4/17/56, 2 p.m., for fur. hrg. Fld. on 4/17/56 mem. govt. in suppt. of ord. in civil contempt of Gertrude Fletcher. Ent. proc. on 4/17/56, finding deft. in civil contempt; ord. deft. committed cust. Mar. until she answers questions or fur. ord. Ct.; fld. jgmt., ord. & commitment in civil contempt. Fld. not. appeal witness (appellant) Fletcher from jgmt. herein; issd. abstr. to Mar. & U. S. Atty. Md. JS5.

Apr. 19—Dktd. & ent. judg. & ord. that Gertrude Fletcher be committed to custody of U. S. Mar. & held by him until sd. Fletcher ans. questions of Grand Jury as ordered by Court, or until fur. ord. this court, & ord.

for service, etc., htf. fld. 4/17/56. Not. attys. JS6.

Fld. copy applic. to Ct. Appeals respdt. Fletcher for bail & affid. in suppt.; fld. cc. ord. CA granting bail on appeal in sum of \$1000.00 to be approved by judge, or if not present, by U. S. Atty., or clerk.

Apr. 21—Ent. proc. & ord. (W) approving bail bd. on appeal of respdt. Fletcher; fld. bail bond on app. NACIC \$1000.00; issd. abstr. to Mar.

Apr. 25—Fld. desig. of Appellant, Fletcher of portions of Record to be contained in Record on Appeal.

May 7—Fld. reprints. trans. of proc. 4/12/56.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 20, inclusive, contain the original

Memorandum in Support of Order in Civil Contempt of Gertrude Fletcher;

Judgment, Order and Commitment in Civil Contempt.

Notice of Appeal;

Designation of Portions of Record on Appeal;

which, together with a full, true and correct copy of the Minutes of the Court had on April 17, 1956, and photostatic copy of Indictment in Case No. 25929-Criminal and Docket Entries; and two volumes of reporter's transcript of proceedings, all in the above-entitled cause, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above case.

I further certify that my fees for preparing the foregoing record amount to \$2.00, which sum has been paid by appellant.

Witness my hand and the seal of the said District Court this 24th day of May, 1956.

[Seal] JOHN A. CHILDRESS,
Clerk.

By /s/ CHARLES E. JONES,
Deputy.

[Endorsed]: No. 15147. United States Court of Appeals for the Ninth Circuit. Gertrude Fletcher, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Southern Division.

Filed June 1, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 15147

In Re

GERTRUDE FLETCHER

STATEMENT OF POINTS AND DESIGNA-
TION OF PORTIONS OF RECORD ON
APPEAL

Comes now the petitioner, Gertrude Fletcher in the above-entitled cause and for her statement of the points on which she intends to rely in her appeal to this Court, states as follows:

I.

That the questions propounded to said petitioner Gertrude Fletcher was in violation of the Fifth Amendment to the United States Constitution.

II.

That said questions and the answers thereto would have tended to incriminate said petitioner.

III.

That said petitioner is being deprived of her liberty without due process of law.

Said petitioner herein designates the following documents and portions of the record as being necessary for such consideration which she desires printed:

1. Notice of appeal.

2. Designation of portions of record on appeal.
3. Docket entries.
4. Indictment (Case No. 25929, Criminal).
5. Judgment, order and committment in civil contempt.
6. Memorandum in support of order in civil contempt.
7. Minutes of the Court had on April 17, 1956.
8. Names and addresses of attorneys.
9. Certificate of clerk.
10. Reporter's transcript of April 12, 1956.
11. Reporter's transcript of April 17, 1956.

Dated: June 13, 1956.

/s/ WALTER L. GORDON, JR.,
Attorney for Petitioner.

Affidavit of service by mail attached.

[Endorsed]: Filed June 14, 1956.